

**ASSEMBLY BILL**

**No. 1923**

**Introduced by Assembly Member Lowenthal**

February 10, 2004

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An act to amend Section 6401.7 of the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1923, as introduced, Lowenthal. Occupational safety and health.

Existing law requires employers to establish, implement, and maintain a written injury prevention program that contains certain mandatory provisions as part of an effort to reduce workplace injuries. Existing law further requires that employers correct unsafe and unhealthy conditions and practices in a timely manner.

This bill would define “unhealthy condition” to include exposure to a critical incident, as defined, and would require employers or emergency response personnel to establish, implement, and maintain a critical incident stress program for the purpose of relieving stress generated by exposure to a critical incident.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 6401.7 of the Labor Code is amended  
2     to read:  
3     6401.7. (a) Every employer shall establish, implement, and  
4     maintain an effective injury prevention program. The program

1 shall be written, except as provided in subdivision (e), and shall  
2 include, but not be limited to, the following elements:

3 (1) Identification of the person or persons responsible for  
4 implementing the program.

5 (2) The employer's system for identifying and evaluating  
6 workplace hazards, including scheduled periodic inspections to  
7 identify unsafe conditions and work practices.

8 (3) The employer's methods and procedures for correcting  
9 unsafe or unhealthy conditions and work practices in a timely  
10 manner.

11 (4) An occupational health and safety training program  
12 designed to instruct employees in general safe and healthy work  
13 practices and to provide specific instruction with respect to  
14 hazards specific to each employee's job assignment.

15 (5) The employer's system for communicating with employees  
16 on occupational health and safety matters, including provisions  
17 designed to encourage employees to inform the employer of  
18 hazards at the worksite without fear of reprisal.

19 (6) The employer's system for ensuring that employees comply  
20 with safe and healthy work practices, which may include  
21 disciplinary action.

22 (b) The employer shall correct unsafe and unhealthy conditions  
23 and work practices in a timely manner based on the severity of the  
24 hazard. *For purposes of this section, "unhealthy conditions"*  
25 *includes, but is not limited to, exposure to a critical incident.*

26 *(1) An employer of emergency response personnel shall*  
27 *establish, implement, and maintain a critical incident stress*  
28 *program designed to relieve stress generated by exposure to a*  
29 *critical incident that could adversely affect the psychological and*  
30 *physical well-being of its emergency response personnel.*

31 *(2) For purposes of this section, "critical incident" means an*  
32 *incident involving mass human casualties, maiming, or*  
33 *dismemberment, a large life loss incident, a fatality involving a*  
34 *child, or a fatality or injury involving a coworker.*

35 (c) The employer shall train all employees when the training  
36 program is first established, all new employees, and all employees  
37 given a new job assignment, and shall train employees whenever  
38 new substances, processes, procedures, or equipment are  
39 introduced to the workplace and represent a new hazard, and  
40 whenever the employer receives notification of a new or



1 previously unrecognized hazard. Beginning January 1, 1994, an  
2 employer in the construction industry who is required to be  
3 licensed under Chapter 9 (commencing with Section 7000) of  
4 Division 3 of the Business and Professions Code may use  
5 employee training provided to the employer's employees under a  
6 construction industry occupational safety and health training  
7 program approved by the division to comply with the requirements  
8 of subdivision (a) relating to employee training, and shall only be  
9 required to provide training on hazards specific to an employee's  
10 job duties.

11 (d) The employer shall keep appropriate records of steps taken  
12 to implement and maintain the program. Beginning January 1,  
13 1994, an employer in the construction industry who is required to  
14 be licensed under Chapter 9 (commencing with Section 7000) of  
15 Division 3 of the Business and Professions Code may use records  
16 relating to employee training provided to the employer in  
17 connection with an occupational safety and health training  
18 program approved by the division to comply with the requirements  
19 of this subdivision, and shall only be required to keep records of  
20 those steps taken to implement and maintain the program with  
21 respect to hazards specific to an employee's job duties.

22 (e) (1) The standards board shall adopt a standard setting forth  
23 the employer's duties under this section, on or before January 1,  
24 1991, consistent with the requirements specified in subdivisions  
25 (a), (b), (c), and (d). The standards board, in adopting the standard,  
26 shall include substantial compliance criteria for use in evaluating  
27 an employer's injury prevention program. The board may adopt  
28 less stringent criteria for employers with few employees and for  
29 employers in industries with insignificant occupational safety or  
30 health hazards.

31 (2) Notwithstanding subdivision (a), for employers with fewer  
32 than 20 employees who are in industries that are not on a  
33 designated list of high hazard industries and who have a workers'  
34 compensation experience modification rate of 1.1 or less, and for  
35 any employers with fewer than 20 employees who are in industries  
36 that are on a designated list of low hazard industries, the board  
37 shall adopt a standard setting forth the employer's duties under this  
38 section consistent with the requirements specified in subdivisions  
39 (a), (b), and (c), except that the standard shall only require written  
40 documentation to the extent of documenting the person or persons

1 responsible for implementing the program pursuant to paragraph  
2 (1) of subdivision (a), keeping a record of periodic inspections  
3 pursuant to paragraph (2) of subdivision (a), and keeping a record  
4 of employee training pursuant to paragraph (4) of subdivision (a).  
5 To any extent beyond the specifications of this subdivision, the  
6 standard shall not require the employer to keep the records  
7 specified in subdivision (d).

8 (3) The division shall establish a list of high hazard industries  
9 using the methods prescribed in Section 6314.1 for identifying and  
10 targeting employers in high hazard industries. For purposes of this  
11 subdivision, the “designated list of high hazard industries” shall  
12 be the list established pursuant to this paragraph.

13 For the purpose of implementing this subdivision, the  
14 Department of Industrial Relations shall periodically review, and  
15 as necessary revise, the list.

16 (4) For the purpose of implementing this subdivision, the  
17 Department of Industrial Relations shall also establish a list of low  
18 hazard industries, and shall periodically review, and as necessary  
19 revise, that list.

20 (f) The standard adopted pursuant to subdivision (e) shall  
21 specifically permit employer and employee occupational safety  
22 and health committees to be included in the employer’s injury  
23 prevention program. The board shall establish criteria for use in  
24 evaluating employer and employee occupational safety and health  
25 committees. The criteria shall include minimum duties, including  
26 the following:

27 (1) Review of the employer’s (A) periodic, scheduled worksite  
28 inspections, (B) investigation of causes of incidents resulting in  
29 injury, illness, or exposure to hazardous substances, and (C)  
30 investigation of any alleged hazardous condition brought to the  
31 attention of any committee member. When determined necessary  
32 by the committee, the committee may conduct its own inspections  
33 and investigations.

34 (2) Upon request from the division, verification of abatement  
35 action taken by the employer as specified in division citations.

36 If an employer’s occupational safety and health committee  
37 meets the criteria established by the board, it shall be presumed to  
38 be in substantial compliance with paragraph (5) of subdivision (a).

39 (g) The division shall adopt regulations specifying the  
40 procedures for selecting employee representatives for

1 employer-employee occupational health and safety committees  
2 when these procedures are not specified in an applicable collective  
3 bargaining agreement. No employee or employee organization  
4 shall be held liable for any act or omission in connection with a  
5 health and safety committee.

6 (h) The employer's injury prevention program, as required by  
7 this section, shall cover all of the employer's employees and all  
8 other workers who the employer controls or directs and directly  
9 supervises on the job to the extent these workers are exposed to  
10 worksite and job assignment specific hazards. Nothing in this  
11 subdivision shall affect the obligations of a contractor or other  
12 employer which controls or directs and directly supervises its own  
13 employees on the job.

14 (i) Where a contractor supplies its employee to a state agency  
15 employer on a temporary basis, the state agency employer may  
16 assess a fee upon the contractor to reimburse the state agency for  
17 the additional costs, if any, of including the contract employee  
18 within the state agency's injury prevention program.

19 (j) (1) The division shall prepare a Model Injury and Illness  
20 Prevention Program for Non-High-Hazard Employment, and shall  
21 make copies of the model program prepared pursuant to this  
22 subdivision available to employers, upon request, for posting in  
23 the workplace. An employer who adopts and implements the  
24 model program prepared by the division pursuant to this paragraph  
25 in good faith shall not be assessed a civil penalty for the first  
26 citation for a violation of this section issued after the employer's  
27 adoption and implementation of the model program.

28 (2) For purposes of this subdivision, the division shall establish  
29 a list of non-high-hazard industries in California, that may include  
30 the industries that, pursuant to Section 14316 of Title 8 of the  
31 California Code of Regulations, are not currently required to keep  
32 records of occupational injuries and illnesses under Article 2  
33 (commencing with Section 14301) of Subchapter 1 of Chapter 7  
34 of Division 1 of Title 8 of the California Code of Regulations.  
35 These industries, identified by their Standard Industrial  
36 Classification Codes, as published by the United States Office of  
37 Management and Budget in the Manual of Standard Industrial  
38 Classification Codes, 1987 Edition, are apparel and accessory  
39 stores (Code 56), eating and drinking places (Code 58),  
40 miscellaneous retail (Code 59), finance, insurance, and real estate

1 (Codes 60–67), personal services (Code 72), business services  
2 (Code 73), motion pictures (Code 78) except motion picture  
3 production and allied services (Code 781), legal services (Code  
4 81), educational services (Code 82), social services (Code 83),  
5 museums, art galleries, and botanical and zoological gardens  
6 (Code 84), membership organizations (Code 86), engineering,  
7 accounting, research, management, and related services (Code  
8 87), private households (Code 88), and miscellaneous services  
9 (Code 89). To further identify industries that may be included on  
10 the list, the division shall also consider data from a rating  
11 organization, as defined in Section 11750.1 of the Insurance Code,  
12 the Division of Labor Statistics and Research, including the logs  
13 of occupational injuries and illnesses maintained by employers on  
14 Form CAL/OSHA No. 200, or its equivalent, as required by  
15 Section 14301 of Title 8 of the California Code of Regulations, and  
16 all other appropriate information. The list shall be established by  
17 June 30, 1994, and shall be reviewed, and as necessary revised,  
18 biennially.

19 (3) The division shall prepare a Model Injury and Illness  
20 Prevention Program for Employers in Industries with Intermittent  
21 Employment, and shall determine which industries have  
22 historically utilized seasonal or intermittent employees. An  
23 employer in an industry determined by the division to have  
24 historically utilized seasonal or intermittent employees shall be  
25 deemed to have complied with the requirements of subdivision (a)  
26 with respect to a written injury prevention program if the employer  
27 adopts the model program prepared by the division pursuant to this  
28 paragraph and complies with any instructions relating thereto.

29 (k) With respect to any county, city, city and county, or district,  
30 or any public or quasi-public corporation or public agency therein,  
31 including any public entity, other than a state agency, that is a  
32 member of, or created by, a joint powers agreement, subdivision  
33 (d) shall not apply.

34 (l) Every workers' compensation insurer shall conduct a  
35 review, including a written report as specified below, of the injury  
36 and illness prevention program (IIPP) of each of its insureds  
37 within four months of the commencement of the initial insurance  
38 policy term. The review shall determine whether the insured has  
39 implemented all of the required components of the IIPP, and  
40 evaluate their effectiveness. The training component of the IIPP

1 shall be evaluated to determine whether training is provided to line  
2 employees, supervisors, and upper level management, and  
3 effectively imparts the information and skills each of these groups  
4 needs to ensure that all of the insured's specific health and safety  
5 issues are fully addressed by the insured. The reviewer shall  
6 prepare a detailed written report specifying the findings of the  
7 review and all recommended changes deemed necessary to make  
8 the IIPP effective. The reviewer shall be an independent licensed  
9 California professional engineer, certified safety professional, or  
10 a certified industrial hygienist.

